

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sara Griffin	Team: Squad #4	CCRB Case #: 201807451	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/09/2018 6:00 PM	Location of Incident: § 87(2)(b)	Precinct: 43	18 Mo. SOL 3/9/2020	EO SOL 3/9/2020	
Date/Time CV Reported Mon, 09/10/2018 2:13 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 09/10/2018 2:13 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POF Jennifer Nicalek	23751	945735	043 PCT
2. POM Sean Higgins	01585	932790	043 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Sean Higgins	Abuse: Police Officer Sean Higgins entered § 87(2)(b) in the Bronx.	§ 87(2)(b)
B.POF Jennifer Nicalek	Abuse: Police Officer Jennifer Nicalek threatened to arrest § 87(2)(b)	§ 87(2)(b)
C.POM Sean Higgins	Abuse: Police Officer Sean Higgins threatened to arrest § 87(2)(b)	§ 87(2)(b)

Case Summary

On September 10, 2018, § 87(2)(b) filed the following complaint with the CCRB via the on-line website. On September 9, 2018, at approximately 4:47pm, Police Officer Sean Higgins and Police Officer Jennifer Nicalek of the 43rd Precinct responded to § 87(2)(b) in the Bronx, regarding a domestic dispute between § 87(2)(b) and her 18-year-old granddaughter, § 87(2)(b). PO Higgins entered § 87(2)(b) (Allegation A-Abuse of Authority, § 87(2)(g)). PO Nicalek allegedly threatened to arrest § 87(2)(b) (Allegation B-Abuse of Authority, § 87(2)(g)). PO Higgins allegedly threatened to arrest § 87(2)(b) (Allegation C- Abuse of Authority, § 87(2)(g)). No summonses were issued or arrests made.

There is Body Worn Camera footage capturing the incident.

Findings and Recommendations

Allegation A- Abuse of Authority: Police Officer Sean Higgins entered § 87(2)(b) in the Bronx.

It is undisputed that § 87(2)(b) and § 87(2)(b) had an on-going dispute regarding § 87(2)(b)'s desire to move out. § 87(2)(b) lived at the location for three years and was named on the lease. It is undisputed that § 87(2)(b) had confiscated § 87(2)(b)'s keys. On multiple occasions, § 87(2)(b) refused § 87(2)(b) entry into the apartment to collect her belongings. On the date of incident, it is undisputed that after a brief conversation with the officers, § 87(2)(b) attempted to close the front door. It is undisputed that PO Higgins placed his foot in the door and propped the door open so § 87(2)(b) could enter and retrieve her belongings.

§ 87(2)(b) testified (Board Review 1) that PO Higgins inquired if § 87(2)(b) resided at the location, and § 87(2)(b) attempted to close the front door after replying that she did. PO Higgins placed his right hand on the door and placed his right foot against the door, with his toe against the door and his heel on the ground. PO Higgins' foot broke the threshold of the doorway.

PO Higgins testified (Board Review 2) that he placed his foot in the door jamb after § 87(2)(b) attempted to close the front door. § 87(2)(b) requested PO Higgins move his foot, which he verbally refused to do. PO Higgins confirmed his foot broke the threshold of the doorway. PO Higgins stated that the front door stayed fully open once he placed his foot in the door jamb. When asked if officers can make entry into a residence and assist a tenant in retrieving belongings during an illegal eviction, PO Higgins replied, "We can stand there and observe, yes." There was no emergency or exigent circumstances regarding § 87(2)(b) retrieving her belongings. PO Higgins stated he did not arrest or summons § 87(2)(b) for illegal eviction, because § 87(2)(b) was inside retrieving her belongings.

Attached below is a video clip from PO Nicalek's BWC capturing PO Higgins propping the door open and § 87(2)(b) entering into the apartment (Board Review 3). PO Higgins' foot is not captured, but his arm on the door and the movement of him placing his foot in the door jamb is.



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The right of people to be secure in their houses shall not be violated. The core of the Fourth Amendment stands in the right of a man to retreat into his own home and therefore be free from unreasonable governmental intrusion. The Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that a threshold may not reasonably be crossed without a warrant. Payton v. New York, 445 U.S. 573 (1979) (Board Review 4).

Patrol Guide Procedure 214-12 (Board Review 5), states that officers should refer to Legal Bureau Bulletin Vol. 23 No. 1 dated March 1993, for legal reference when dealing with unlawful eviction. Officers are instructed to summon or arrest a violator for illegal eviction.

Legal Bureau Bulletin Vol. 23 No. 1 (Board Review 6) states that it is department policy not to physically assist an occupant in gaining entry to the dwelling unit. Accordingly, police officers should not attempt to break into the dwelling unit in order to allow a tenant to re-enter.

§ 87(2)(g)

[REDACTED]

Allegation B-Abuse of Authority: Police Officer Jennifer Nicalek threatened to arrest

§ 87(2)(b)

Allegation C- Abuse of Authority: Police Officer Sean Higgins threatened to arrest

§ 87(2)(b)

[REDACTED] testified (Board Review 1) that while § 87(2)(b) was inside her bedroom collecting her belongings, PO Higgins and PO Nicalek threatened to arrest her for illegal eviction.

Attached below are two video clips from PO Nicalek's Body Worn Camera (Board Review 7) capturing two separate statements she made to § 87(2)(b) informing her that she could be arrested for illegal eviction. The remarks are statements of fact, as opposed to threats of arrest.



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(Board Review 8)



201807451_20181105_1610_DM.mp4

(Board Review 9)

As per New York City Administrative Code §26-251 (Board Review 10), it shall be unlawful for any person to evict or attempt to evict an occupant of a dwelling unit who has lawfully occupied the dwelling unit for thirty consecutive days or longer by engaging in a course of conduct which interferes with or is intended to interfere with or disturb the comfort, repose, peace or quiet of such occupant in the use or occupancy of the dwelling unit.

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 12).
- PO Higgins has been a member of service for 15 years and has been a subject in 15 CCRB complaints and 31 allegations, none of which were substantiated. § 87(2)(g) (Board Review 13).
- PO Nicalek has been a member of service for 10 years and has been a subject in six CCRB complaints and 11 allegations, none of which were substantiated. § 87(2)(g) (Board Review 14).

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- According to the Office of Court Administration (OCA), § 87(2)(b) has no history of convictions in New York City (Board Review 15).
- As of November 7, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards this to complaint (Board Review 16).

Squad No.: _____

Investigator:	_____	_____	_____
	Signature	Print Title & Name	Date

Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date